

Before the
Federal Communications Commission
Washington, D.C. 20554

Table with 2 columns: Program Name and WC Docket No. Rows include Affordable Connectivity Program, Lifeline and Link Up Reform and Modernization, Schools and Libraries Universal Service Support Mechanism, etc.

ORDER

Adopted: August 18, 2023

Released: August 18, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we waive, on our own motion, certain Affordable Connectivity Program, Lifeline, E-Rate, Emergency Connectivity Fund, Rural Health Care, and High Cost rules and deadlines to assist participants and service providers, including Universal Service Fund (USF) contributors, located in the areas affected by the Hawaii Wildfires, which started in Maui County on August 8, 2023.

1 E-Rate is formally known as the schools and libraries universal support mechanism.

2 Jonathan Oatis, Reuters, Hawaii wildfires: How did the Maui fires start and are they still burning? (Aug. 15, 2023), https://www.reuters.com/world/us/how-did-hawaii-wildfires-start-what-know-about-maui-big-island-blazes-2023-08-11/.

3 See Schools and Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health Care Universal Support Mechanism; COVID-19 Telehealth Program; Universal Service Contribution Methodology; Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program; Connect America Fund, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, and 10-90, Order, DA 22-998 (WCB Sept. 22, 2022) (Hurricane Fiona Order); Schools and

(continued....)

II. BACKGROUND

2. On Tuesday, August 8, 2023, wildfires started in Maui and Hawaii counties in the State of Hawaii and quickly grew in size and power, causing catastrophic damage and destruction to homes and businesses.⁴ In the historic town of Lahaina in Maui County these fires have caused at least 106 deaths, destroyed more than 2,700 structures, and burned 2,170 acres.⁵ The wildfires and hurricane strength winds also cut off power and disrupted 911 and other communications services on parts of the island.⁶ More than 5,000 homes and businesses in Maui lost power⁷ and thousands have been displaced from their homes.⁸ At the same time, the same hurricane force winds that caused the devastation on Maui also sparked two wildfires that burned approximately 1,500 acres in Hawaii County.⁹ The fires initially threatened nearly 200 homes and electrical transmission lines.¹⁰ While the full picture of the wildfires' damage is still being determined, initial assessments estimate that the economic cost could approach \$7 billion.¹¹ It is unknown at this time when power will be fully restored for all customers. In response, the

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Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health Care Universal Support Mechanism; COVID-19 Telehealth Program; Universal Service Contribution Methodology; Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program; Connect America Fund, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, and 10-90, Order, DA 22-1063 (WCB Oct. 4, 2022) (*Hurricane Ian Order*); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Service Support Mechanism; Lifeline and Link Up Reform and Modernization; Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket Nos. 02-60, 11-42, and 06-122, Order, 32 FCC Rcd 7456 (2017) (*Hurricanes Harvey, Irma & Maria Order*) (waiving certain E-Rate, RHC, Lifeline, and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (*Hurricane Katrina Order*) (adopting temporary rules to provide rural and non-rural public and nonprofit health care providers in areas devastated by Hurricane Katrina, and in areas where evacuees are located, with assistance in order to help in the recovery efforts).

⁴ [Kiara Alfonseca](https://abcnews.go.com/US/timeline-deadly-wildfires-maui-day-day/story?id=102253075), ABC News, *Timeline: How the deadly wildfires took over Maui day by day*, (Aug. 14, 2023), <https://abcnews.go.com/US/timeline-deadly-wildfires-maui-day-day/story?id=102253075>; [Nouran Salahieh and Raja Razek](https://www.cnn.com/2023/08/15/us/hawaii-maui-wildfires-death-toll-tuesday/index.html), CNN, *At least 106 people were killed in Maui's wildfires, officials say*, (Aug. 16, 2023), <https://www.cnn.com/2023/08/15/us/hawaii-maui-wildfires-death-toll-tuesday/index.html>.

⁵ *Id.*

⁶ Holly Yan et al., *'Like something out of a horror movie': At least 6 dead and communities decimated in Maui wildfires* (Aug. 10, 2023), <https://www.cnn.com/2023/08/09/weather/maui-county-wildfires-hurricane-dora/index.html>.

⁷ The Maui News, *5,000 customers still without power in West Maui, Upcountry* (Aug. 14, 2023), <https://www.mauinews.com/news/local-news/2023/08/5000-customers-still-without-power-in-west-maui-upcountry/>.

⁸ [Nouran Salahieh et al.](https://www.cnn.com/2023/08/14/us/maui-wildfires-what-we-know/index.html), *The death toll from the Maui wildfires has climbed to 99. Here's what we know about the deadliest US fire in over a century* (Aug. 14, 2023), <https://www.cnn.com/2023/08/14/us/maui-wildfires-what-we-know/index.html>.

⁹ N'dea Yancey-Bragg, et al., USA Today, *'Apocalyptic': People scramble for safety as Hawaii wildfires rage; at least 36 dead in Maui: Updates* (Aug. 10, 2023), <https://www.usatoday.com/story/news/nation/2023/08/09/maui-hawaii-wildfire-live-updates/70556894007/>.

¹⁰ *Id.*

¹¹ NBC News, *Maui fires live updates: Search covers a quarter of Lahaina with hundreds still missing*, <https://www.nbcnews.com/news/us-news/live-blog/maui-fires-live-updates-lahaina-search-missing-death-toll-rca99933>.

President has declared a state of emergency for Maui and Hawaii counties, allowing authorities to provide disaster relief.¹²

3. Historically, the Wireline Competition Bureau (Bureau) has granted waivers of certain Program deadlines for areas affected by natural disasters.¹³ For the purposes of the waivers we grant today, we define “Affected Disaster Areas” as the areas in the State of Hawaii that the Federal Emergency Management Agency (FEMA) has designated as eligible for Individual or Public Assistance for the purposes of federal disaster relief as of the release date of this Order.¹⁴

III. DISCUSSION

4. In response to the damage caused by the Hawaii Wildfires, on our own motion, we waive various provisions of the Lifeline, Affordable Connectivity Program (ACP), E-Rate, Emergency Connectivity Fund (ECF) Program, Rural Health Care (RHC) Program, and High Cost rules for those Federal Communications Commission (FCC or Commission) programs’ participants and for USF contributors located in the Affected Disaster Areas.¹⁵ Generally, the Commission’s rules may be waived for good cause shown.¹⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take

¹² See FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Hawaii (Aug. 10, 2023), <https://www.fema.gov/press-release/20230810/president-joseph-r-biden-jr-approves-major-disaster-declaration-hawaii> (last visited Aug. 15, 2023); The White House, President Joseph R. Biden, Jr. Approves Hawaii Disaster Declaration (Aug. 10, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/10/president-joseph-r-biden-jr-approves-hawaii-disaster-declaration-3/> (last visited Aug. 15, 2023). The Major Disaster Declaration authorized assistance for individuals affected by the wildfires in Maui County, and public assistance for emergency protective measures in Hawaii County. *Id.*

¹³ See, e.g., *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization; Connect America Fund; Federal-State Joint Board on Universal Service High-Cost Universal Service Support; Establishing Emergency Connectivity Fund to Close the Homework Gap; Emergency Broadband Benefits Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, Order, DA 21-1107, 36 FCC Rcd 13405 (WCB 2021) (*Hurricane Ida Order*); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, Order, 32 FCC Rcd 7456, 7457, para. 2 (WCB 2017) (*Hurricanes Harvey, Irma, and Maria Order*); *Schools and Libraries Universal Support Mechanism*, WC Docket No. 02-6, Order, 34 FCC Rcd 56, 57, para. 2 (WCB 2019) (*California Wildfires Order*); *Request for Waiver of Section 54.514 of the Commission’s Rules by Florida Department of Management Services; Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 10186, 10188, para. 5 (WCB 2018) (*Florida Hurricanes Order*); *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 9538, 9540, para. 4 (2017) (*FCC Hurricanes Harvey, Irma, and Maria Order*); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883, 16885, para. 4 (2005) (*Hurricane Katrina Order*).

¹⁴ Currently, Hawaii and Maui counties are covered within the Affected Disaster Areas designated by FEMA. See FEMA, Hawaii Wild Fires (Aug. 15, 2023), <https://www.fema.gov/disaster/4724/designated-areas>. We note that while the corresponding map includes Kalawao county, the text of the FEMA disaster declaration includes only Maui and Hawaii counties.

¹⁵ We recognize that entities in the Affected Disaster Areas may need additional relief relating to Lifeline, ACP, E-Rate, ECF, RHC, High Cost, and Contributions obligations not addressed in this Order as they complete assessments of the damage to their networks; such entities should request specific relief from the Bureau to address these individualized circumstances.

¹⁶ 47 CFR § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d at 1159.

into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸

A. Lifeline

5. We first waive the Lifeline non-usage, recertification, and reverification requirements for subscribers residing in the Affected Disaster Areas. We find that good cause exists to waive sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for eligible telecommunications carriers (ETCs) serving Lifeline subscribers residing in the Affected Disaster Areas through October 31, 2023.¹⁹ Given the devastation caused by the wildfires to infrastructure in the Affected Disaster Areas, strict compliance with these rules may be impracticable and may risk harm to Lifeline subscribers who may be inappropriately de-enrolled during the recovery efforts.²⁰

6. To promote the maintenance and rebuilding of communities affected by the wildfires and to facilitate continued access to telecommunications services for disaster victims, we find it is in the public interest to temporarily waive sections 54.405(e)(3) and 54.407(c)(2) of the Commission's rules.²¹ Under these rules, ETCs must de-enroll Lifeline subscribers who do not pay a monthly fee for their Lifeline-supported service and do not use that service for 30 consecutive days.²² Waiving these rules will

¹⁸ *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ See 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), 54.410(f).

²⁰ See, e.g., *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, *Order*, 32 FCC Rcd. 7456 (2017) (waiving certain E-Rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Order*, 32 FCC Rcd 6846 (2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Order*, 33 FCC Rcd 11236 (2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Connect America Fund, Federal and State Joint Board on Universal Service High Cost Universal Service Support, Establishing Emergency Connectivity Fund to Close the Homework Gap, Emergency Broadband Benefit Program*, CC Docket No. 02-06, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, 36 FCC Rcd 13405 (WCB 2021) (waiving certain E-Rate, Rural Health Care, Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, *Order*, DA-22-998 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors located in the areas affected by Hurricane Fiona); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program, Connect America Fund*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, WC Docket No. 10-90, *Order*, DA-22-1063 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, High Cost, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors, located in the areas affected by Hurricane Ian).

²¹ 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

²² See *id.*

help low-income consumers retain access to emergency communications services during this natural disaster, and allows ETCs to continue providing Lifeline service to disaster victims in the Affected Disaster Areas without requiring those subscribers to de-enroll and re-enroll in the program as they continue to work through the damage of the wildfires.²³

7. We also find that good cause exists to waive sections 54.405(e)(4) and 54.410(f) of the Commission's rules, which require Lifeline subscribers to demonstrate continued eligibility for the program, through October 31, 2023.²⁴ This waiver will prevent the de-enrollment of any Lifeline subscribers who would otherwise have been required to certify their continued eligibility to the National Verifier during the waiver period.²⁵ Waiver of these rules will allow the Universal Service Administrative Company (USAC) and ETCs serving Lifeline subscribers in the Affected Disaster Areas additional time to complete the recertification process. Disruptions to telephone and Internet service resulting from the wildfires could make it difficult, if not impossible, for Lifeline subscribers to receive and respond to recertification requests and reminders. At the expiration of the waiver period, recertification efforts will resume and subscribers who were subject to the waiver will have an additional 60 days to respond to recertification notices.

8. Where USAC has already conducted recertification outreach, we direct USAC to not conduct de-enrollments for any subscriber who would have been de-enrolled, and was not actually de-enrolled, after August 10, 2023. USAC should send new outreach to these subscribers at the end of this waiver period, as is practicable, and give such subscribers an additional 60 days to complete their recertification activity. Any subscriber who has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period, and any subscriber who had previously de-enrolled from the program must re-enroll pursuant to the Commission's rules.

9. USAC also conducts a one-time reverification of eligibility for each existing Lifeline subscriber to confirm that all existing Lifeline subscribers meet the National Verifier's eligibility standards. We direct USAC not to de-enroll any Lifeline subscriber residing in the Affected Disaster Areas for failure to successfully respond to a pending reverification request with documentation deadlines that will occur before October 31, 2023. We also direct USAC not to open any new reverification requests requiring documentation for Lifeline subscribers or ETCs in the Affected Disaster Areas until after October 31, 2023 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

10. ETCs in the Affected Disaster Areas that are unable to comply with the Lifeline non-usage, recertification, and reverification requirements at the end of this waiver period may request additional, narrowly tailored relief from these requirements from the Bureau. Additionally, if the wildfires have significantly impacted an ETC's ability to complete an ongoing Lifeline audit, the Bureau will consider requests for extension of any relevant deadlines on a case-by-case basis.

B. Affordable Connectivity Program

11. In order to promote continued access to broadband service for Affordable Connectivity Program (ACP) households affected by the wildfires, we find that it is in the public interest to temporarily waive through October 31, 2023, for ACP households in the Affected Disaster Areas, sections 54.1808(c)(1) and (2) and 54.1809(c) of the Commission's rules²⁶ concerning the non-usage requirement

²³ As noted above, the waiver period is through October 31, 2023. At the end of the waiver period, the subscriber will have 30 days (beginning on November 1, 2023) to use their Lifeline-supported service. If the subscriber does not use their Lifeline-supported service during that 30-day timeframe, they will enter their 15-day cure period on December 1, 2023.

²⁴ 47 CFR §§ 54.405(e)(4), 54.410(f).

²⁵ See 47 CFR § 54.405(e)(4) (requiring 60 days' notice to subscribers to respond to recertification efforts prior to de-enrollment).

and de-enrollment for non-usage, and sections 54.1806(f)(1) and (5) and 54.1809(d) of the ACP rules concerning the annual recertification and de-enrollment for failure to recertify.²⁷ Strict compliance with these rules may be impracticable and may risk harm to ACP subscribers who may be de-enrolled during the rebuilding and recovery efforts.²⁸

12. Under the ACP rules in sections 54.1808(c)(1) and (2) and 54.1809(c), participating providers offering an ACP service for which the household does not pay a monthly fee are required to certify that every such household has used its supported service at least once every consecutive 30 days, as usage is defined in section 54.407(c)(2) of the Commission's rules, in order to claim ACP reimbursement for discounted ACP service for a specific subscriber in a given service month.²⁹ Providers cannot claim support for, and must de-enroll, subscribers who do not cure their non-usage during the 15-day cure period.³⁰ We recognize that power and service outages caused by the wildfires may interfere with a household's ability to use their ACP-supported service, perhaps for an extended period of time. Allowing participating providers in the Affected Disaster Areas to maintain service for these ACP households as they experience the aftermath of the wildfires, and claim reimbursement for the service

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²⁶ 47 CFR §§ 54.1808(c)(1), (2), and 54.1809(c). We make clear that the temporary waiver of these rules does not waive the language in section 54.1808(c)(2) that allows providers to seek reimbursement only after the subscriber activates their ACP service.

²⁷ 47 CFR §§ 54.1806(f)(1), (5), 54.1809(d).

²⁸ See, e.g., *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, Order, 32 FCC Rcd. 7456 (2017) (waiving certain E-Rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 32 FCC Rcd 6846 (2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 33 FCC Rcd 11236 (2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Connect America Fund, Federal and State Joint Board on Universal Service High Cost Universal Service Support, Establishing Emergency Connectivity Fund to Close the Homework Gap, Emergency Broadband Benefit Program*, CC Docket No. 02-06, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, 36 FCC Rcd 13405 (WCB 2021) (waiving certain E-Rate, Rural Health Care, Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, Order, DA-22-998, 1 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors located in the areas affected by Hurricane Fiona); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program, Connect America Fund*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, WC Docket No. 10-90, Order, DA-22-1063, 1 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, High Cost, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors, located in the areas affected by Hurricane Ian).

²⁹ 47 CFR § 54.1808(c)(1) and (2).

³⁰ 47 CFR §§ 54.1808(c)(1) and (2), and 54.1809(c).

provided to them, helps to ensure that these households are not de-enrolled from the program during the limited waiver period when it may be impossible for them to use their ACP-supported service. It will also ensure that subscribers who lose service due to the wildfires will be able to regain access to their ACP-supported service when it again becomes available to them. After the expiration of the waiver period, ACP subscribers who are subject to the non-usage rule will have 30 days to use their ACP service for the purposes of sections 54.1808(c)(1) and (2) of the Commission's rules, and 15 days to cure any non-usage.³¹ ACP providers in the Affected Disaster Areas that are unable to comply with the ACP non-usage and related de-enrollment requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the Bureau.

13. We find it is also in the public interest to temporarily waive sections 54.1806(f)(1) and (5), and 54.1809(d), of the Commission's rules for ACP subscribers in the Affected Disaster Areas who would have been required to respond to recertification outreach during the waiver period.³² Waiver of these rules will allow USAC and providers serving ACP subscribers in the Affected Disaster Areas additional time to complete the annual recertification process. Disruptions to electricity and communication services resulting from the wildfires could make it difficult, if not impossible, for ACP subscribers in the Affected Disaster Areas to receive and respond to recertification requests and reminders during the waiver period. After the waiver period ends on October 31, 2023, pursuant to section 54.1809(d) of the ACP rules, ACP-only households will have 60 days to respond to recertification outreach by USAC or their service provider as applicable.³³ Where USAC or the participating provider has already conducted recertification outreach to an ACP subscriber in the Affected Disaster Areas, after the end of the waiver period, new outreach should be sent to these subscribers within 14 days of the waiver period ending on October 31, 2023, and such subscribers should have an additional 60 days to complete their recertification activity.³⁴

14. Under the ACP rules, qualifying households that are enrolled in both the ACP and Lifeline may rely on a successful Lifeline recertification to satisfy the annual ACP recertification requirement.³⁵ Households that are enrolled in both programs who do not pass Lifeline recertification still have an opportunity to demonstrate that they qualify for the ACP, if required, after completion of the

³¹ As noted above, the waiver period is through October 31, 2023. At the end of the waiver period, the subscriber will have 30 days (beginning on November 1, 2023) to use their ACP-supported service. If the subscriber does not use their ACP-supported service during that 30-day timeframe, they will enter their 15-day cure period on December 1, 2023.

³² During the waiver period, USAC may continue to check the continued eligibility of ACP households in the Affected Disaster Areas using the database connections through the National Verifier to the extent that access to those databases has not been impacted by the wildfires. For these automated database checks, USAC is able to verify the continued eligibility of households enrolled in the ACP without any action on the part of the subscriber. During the waiver period, participating providers that are required to recertify their ACP subscribers under the ACP rules may similarly use any permitted eligibility confirmation mechanisms or methods that do not require affirmative action on the part of the subscribers. During the temporary waiver period, participating providers and USAC should otherwise cease any recertification measures that require affirmative action from ACP-households. USAC and participating providers may resume such recertification measures steps after the end of the waiver period.

³³ 47 CFR § 54.1809(d). We note that given the progress of ACP recertification efforts in the Affected Disaster Areas there is no near-term subscriber de-enrollment concern, as there is, and was addressed above, in the Lifeline program.

³⁴ For the ACP, unlike Lifeline, in certain circumstances participating providers and not USAC are responsible for conducting the required ACP annual recertification. *See* 47 CFR § 54.1806(f)(1) (outlining when USAC and when service providers, respectively, conduct ACP recertifications).

³⁵ 47 CFR § 54.1806(f)(1).

Lifeline recertification process.³⁶ Households that are enrolled in both Lifeline and the ACP, and that do not pass their Lifeline recertification for calendar year 2023, will be afforded time to demonstrate their continued eligibility for the ACP even if this extends into 2024.³⁷ We expect USAC and participating providers to start the recertification process for such subscribers in the Affected Disaster Areas within 14 days of the waiver period ending on October 31, 2023. To the extent that an ACP subscriber (whether enrolled in the ACP only or in both the ACP and Lifeline) successfully completes their recertification process in 2024, they would not be required to undergo ACP recertification again in 2024.

C. E-Rate Program

15. For applicants and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following E-Rate program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the deadline to file FCC Forms 486, 472, and 474; (3) the September 30, 2023 service implementation deadline for non-recurring services; (4) portions of the service and equipment substitution rule; and (5) document retention and production requirements for participating E-Rate applicants and service providers whose documents were destroyed by the Hawaii Wildfires.

16. *E-Rate Program Deadlines.* For applicants located in Affected Disaster Areas, we waive, on a temporary basis, the following deadlines that may occur on and after August 10, 2023,³⁸ and provide those affected with up to 150 calendar days from the release date of this Order to submit the required filing:³⁹

- Requests for review or waiver of decisions by USAC, directed to USAC or the Commission.⁴⁰
- Filing FCC Form 486 (Receipt of Service Confirmation and Children’s Internet Protection Act (CIPA) Certification Form).⁴¹
- Filing FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and FCC Form 474 (Service Provider Invoice Form).⁴²

³⁶ As explained in the *Affordable Connectivity Program Order*, there are a few differences in the eligibility criteria between the Lifeline Program and the ACP. See *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450, 20-445, 37 FCC Rcd 484, 527, para. 86, & n. 248 (2022) (*Affordable Connectivity Program Order*). Accordingly, if a household enrolled in both programs does not pass Lifeline recertification, this would not automatically render that household ineligible for the ACP. See *id.*

³⁷ See *Affordable Connectivity Program Order*, 37 FCC Rcd at 527, para. 86 (“Where a household enrolled in both Lifeline and the Affordable Connectivity Program does not respond or fails recertification for Lifeline, the subscriber will still have an opportunity to demonstrate their continued eligibility for the Affordable Connectivity Program.”); 47 CFR § 54.1809(d) (giving ACP subscribers a 60-day deadline to respond to recertification efforts).

³⁸ See *supra* note 13. E-Rate program participants located in the Affected Disaster Areas who may have already missed these deadlines due to damage or disruption caused by the Hawaii Wildfires may submit the required filings up to 150 calendar days from the release date of this Order.

³⁹ We note that USAC, the Administrator of the universal service support programs, including the E-Rate program, has already suspended many of its administrative deadlines for applicants in the Affected Disaster Areas pursuant to its natural disaster procedures.

⁴⁰ 47 CFR §§ 1.106, 54.720. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should include this waiver in their filing.

⁴¹ Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 at 4; see also *Federal-State Joint Board on Universal Service, Children’s Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12445, para. 5 (2002).

⁴² 47 CFR § 54.514(a). Given the significant damage inflicted by the wildfires, consistent with precedent we find that extraordinary circumstances exist warranting a waiver of the invoice filing deadline rule. See *Hurricanes*

(continued....)

17. *Service Implementation Deadline Extensions.* Additionally, we find that good cause exists to waive section 54.507(d)(4) of the Commission's rules, subject to the limitations herein, for applicants located in the Affected Disaster Areas. We find that the extensive damage to property, facilities, and resources resulting from the Hawaii Wildfires will make it impossible for some applicants in the Affected Disaster Areas to complete the installation of internal connections and other non-recurring services by the September 30, 2023 deadline for Funding Year (FY) 2022. Accordingly, we extend the FY 2022 implementation deadline for non-recurring services to September 30, 2024 for applicants in the Affected Disaster Areas, and we likewise extend the deadline for all other applicants that have non-recurring service funding requests with September 30, 2023 as the deadline in the Affected Disaster Areas.⁴³

18. *Service and Equipment Substitutions.* Consistent with precedent,⁴⁴ we will also provide increased flexibility for service and equipment substitutions in the Affected Disaster Areas. Section 54.504(d) of the Commission's rules allows USAC to grant a request by an applicant to substitute a service or product for another where: (a) the service or product has the same functionality;⁴⁵ (b) the substitution does not violate any contract provision or state or local procurement laws; (c) the substitution does not result in an increase in the percentage of ineligible services or functions; and (d) the applicant certifies that the requested change is within the scope of the controlling FCC Form 470.⁴⁶ For applicants

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Harvey, Irma and Maria Order, 32 FCC Rcd at 7458, n.13) (waiving E-Rate invoice deadline for areas impacted by Hurricanes Harvey, Irma, and Maria); *Hurricane Ida Order*, 36 FCC Rcd at 13407-08, at para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167, at *4, para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643 at *2, para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ian); *Petition of TeleGuam Holdings, LLC for Waiver and Certain Other Relief; Affordable Connectivity Program; Lifeline and Link Up Reform and Modernization; Schools and Libraries Universal Support Mechanism; Rural Health Care Universal Service Support Mechanism; Connect America Fund; Universal Service Contribution Methodology; Telephone Number Portability; Numbering Resource Optimization*, CC Docket Nos. 02-6, 95-116, 99-200, WC Docket Nos. 21-450, 11-42, 02-60, 10-90, 06-122, Order, DA 23-571, 2023 WL 4348349, at *5, para. 16 (rel. June 30, 2023) (*Typhoon Mawar Order*) (waiving E-Rate invoicing deadline for areas impacted by Typhoon Mawar); *see also Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd at 8965-66, paras. 238-40 (2014).

⁴³ 47 CFR § 54.507(d)(4); *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 22-976, 2022 WL 4396831, *2, para. 4 (WCB Sept. 19, 2022) (extending the service implementation deadline for certain FY 2020 and 2021 funding requests that had September 30, 2022 as the deadline pursuant to section 47 CFR § 54.507(d)(4)).

⁴⁴ *See, e.g., Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 9543-44, para. 10 (providing increased flexibility for E-Rate program service substitutions in the wake of Hurricanes Harvey, Irma, and Maria); *Hurricane Ida Order*, 36 FCC Rcd at 13409, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167 at *5-6, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643 at *5-6, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ian); *Typhoon Mawar Order*, 2023 WL 4348349, at *5, para. 18 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Typhoon Mawar).

⁴⁵ The Commission previously determined that an equipment or service substitution request does not have the same functionality if it "changes the type of service requested pursuant to the original funding request from one category to another (e.g., a change from telecommunications service to internal connections, or a change from Internet access to telecommunications service)." *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26925, n.82 (2003).

⁴⁶ 47 CFR § 54.504(d)(1)(iv).

located in Affected Disaster Areas that need to replace services or product(s) that have been disrupted, destroyed, or rendered unusable by the Hawaii Wildfires, we waive this rule to exclude the requirement that the substituted service or product(s) must have the same functionality as the service or product that it is replacing.⁴⁷ This will allow applicants in the Affected Disaster Areas maximum flexibility to substitute services and product(s) based on their local needs without being constrained by categories of service or service types (e.g., applicants may substitute Internet access service with internal connections and vice versa),⁴⁸ so that they may use already approved E-Rate funding to replace damaged or destroyed products(s) and restore services, subject to the limitations stated herein.⁴⁹ We believe this additional flexibility will allow applicants, given their specific understanding of their circumstances, to use E-Rate funding in ways that best meet their needs. The flexibility conferred by this measure effectively waives section 54.504(d)(1)(i) of the Commission's rules while keeping the remaining aspects of our service and equipment substitution rule intact. Applicants must continue to ensure that a service and/or equipment substitution: (a) does not violate any contract provisions;⁵⁰ (b) does not violate state or local procurement laws; (c) does not result in an increase in the percentage of ineligible services or functions; and (d) is within the scope of an FCC Form 470.⁵¹ Applicants must also request approval of service and/or equipment substitutions by submitting a service and/or equipment substitution request to USAC.

19. *Documentation Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records as a result of the destruction caused by the Hawaii Wildfires. We waive section 54.516(a) of our rules with respect to such destroyed records, which

⁴⁷ 47 CFR § 54.504(d)(1)(i). We remind applicants that they may only request service and equipment substitutions if the implementation deadline for the service or product to be replaced has not passed. *See, e.g.*, 47 CFR § 54.507(d)(1), (d)(4); *see also Modernizing the E-Rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15550, 15558, paras. 37, 49 (2014) (*Second 2014 E-Rate Order*).

⁴⁸ In some cases, replacing one type of service with another may require applicants to switch service providers. The Commission's rules permit applicants to do so when: (a) it is allowed under an applicant's state and local procurement rules; (b) it is allowed under the terms of any contract between the applicant and its original service provider; (c) the applicant has notified its original service provider of its intent to change service providers; (d) there is a legitimate reason to change providers (e.g., the service provider is unable to perform the requested services); and (e) the newly selected service provider received the next highest point value in the original bid evaluation. *See Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket Nos. 02-6, et al., Sixth Report and Order, 25 FCC Rcd 18762, 18803, para. 91, n.272 (2010) (*Schools and Libraries Sixth Report and Order*) (citing *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45 and 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*), and stating that the new requirements are in addition to those outlined in the *Copan Order*).

⁴⁹ Beginning in Funding Year 2021, school districts and library systems are permitted to transfer equipment between schools within a district and libraries within a system without notifying USAC of the transfer. *See* 47 CFR § 54.513(d); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11238-39, para. 49 (2019). However, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years as required by the Commission's rules. 47 CFR § 54.513(d).

⁵⁰ The additional flexibility provided for applicants located in the Affected Disaster Areas seeking substitutions for services and products damaged by the Hawaii Wildfires is not intended to invalidate any contracts between applicants and service providers. Applicants are solely responsible for ensuring that requested equipment and service substitutions are permitted under their agreements with service providers.

⁵¹ 47 CFR § 54.504(d). In the event that an equipment or service substitution results in a change in the pre-discount price for the supported equipment or service, support is based on the lower of either the pre-discount price of the equipment or service for which support was originally requested or the pre-discount price of the new, substituted equipment or service. *See* 47 CFR § 54.504(d)(2).

requires schools, libraries, consortia, and service providers to retain all documents related to their application for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.⁵² Applicants and service providers will not be penalized for failure to retain or produce records destroyed by the wildfires. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the wildfires. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party upon request by USAC or the Commission. We note that the record retention and production requirements under our rules continue to apply to all records that were not destroyed by the wildfires, including records relating to any relief granted by this Order.

20. We find that the significant property damage, power outages, and disruptions in services caused by the wildfires in the Affected Disaster Areas constitute extremely unusual circumstances warranting the temporary waiver of the rules and procedures described above. We find that a 150-day waiver period for the filing deadlines listed above and other relief granted by this Order are appropriate measures to accommodate the extraordinary circumstances caused by the Hawaii Wildfires, while continuing to protect program integrity. E-Rate applicants or service providers in the Affected Disaster Areas that are unable to comply with these program deadlines or procedures at the end of this period may request additional, narrowly-tailored relief from these or other requirements from the Bureau.

D. Emergency Connectivity Fund Program

21. For applicants and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Emergency Connectivity Fund (ECF) program rules: (1) the 30-day deadline to file appeals and requests for waiver; (2) the deadline to file FCC Forms 472, and 474; (3) portions of the service and equipment substitution rule; and (4) document retention and production requirements for participating ECF program participants whose documents were destroyed by the Hawaii Wildfires.

22. *Emergency Connectivity Fund Program Deadlines.* For Emergency Connectivity Fund (ECF) program participants located in the Affected Disaster Areas, we first waive, on a temporary basis, the deadline to submit a request for review or waiver of decisions by USAC, directed to USAC or the Commission and provide these participants with up to 150 calendar days from the release date of this Order to submit their filing.⁵³ Section 54.1718(b) of the Commission's rules requires an affected party requesting review of a decision by USAC or waiver to submit such request within 30 days from the date of USAC's decision, which is shorter than the timeframe permitted under the E-Rate program rules.⁵⁴ Given this shortened timeframe and recognizing that ECF program participants may have difficulty submitting their requests while dealing with the impact of the Hawaii Wildfires, we find it is in the public interest to waive and extend this deadline by 150 days for program participants in the Affected Disaster Areas.⁵⁵ For the same reason, we also direct USAC to extend its administrative deadlines associated with information requests issued to affected program participants, including Program Integrity Assurance-related requests, and provide them with an additional 150 days from the release date of this Order to respond to such requests.⁵⁶

⁵² 47 CFR § 54.516(a).

⁵³ 47 CFR § 54.1718(b); 47 CFR § 1.106. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should indicate such basis in their filing.

⁵⁴ 47 CFR § 54.1718(b).

⁵⁵ We anticipate that some affected applicants will need more time to submit appeals of USAC's decisions than provided under our rules; and, therefore, we find a waiver of this deadline appropriate.

⁵⁶ See, e.g., *Hurricane Ida Order*, 36 FCC Rcd at 13413, para. 23 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167,

(continued....)

23. We also waive, on an a temporary basis, the deadline to submit requests for reimbursement and provide ECF program participants located in the Affected Disaster Areas with up to 150 days from the release date of this Order to submit their ECF FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and ECF FCC Form 474 (Service Provider Invoice Form).⁵⁷ Given the significant damage inflicted by the Hawaii Wildfires, we find good cause exists to waive the invoice filing deadline.⁵⁸ Furthermore, we recognize that there are ECF participants in the Affected Disaster Areas who may have difficulty compiling the necessary documentation and submitting requests ahead of their invoice filing deadline, the first of which falls on October 30, 2023 for many ECF participants.⁵⁹ We therefore find it is in the public interest to waive and extend this deadline by 150 days from the release date of this Order for ECF program participants in the Affected Disaster Areas.

24. *Service and Equipment Substitutions.* Additionally, in light of the destruction to equipment and services destroyed by the Hawaii Wildfires, we provide additional flexibility to ECF program applicants to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by the wildfires.⁶⁰ Section 54.1710(b) of the Commission's rules allows USAC to grant a request by an applicant to substitute equipment or service for another where (i) the equipment or service has the same functionality and (ii) the substitution does not violate any contract provisions or state, local, or Tribal procurement law.⁶¹ For applicants in the Affected Disaster Areas that need to replace equipment or services that have been disrupted, destroyed, or rendered unusable by the Hawaii Wildfires, we waive this rule to exclude the requirement that the substituted equipment or service must have the same functionality as the equipment or service that it is replacing.⁶² This will allow applicants in the Affected Disaster Areas the maximum flexibility using already approved ECF funding to substitute much needed equipment or services (including service

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at *6-7, para. 10 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643, at *7, para. 10 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Ian).

⁵⁷ 47 CFR § 54.1711(d).

⁵⁸ See *Request for a Waiver by T-Mobile USA, Inc., Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No 21-93, Order, DA 23-669, at para. 8 (WCB rel. Aug. 14, 2023) (*ECF Invoice Filing Waiver Order*) (finding good cause and providing a waiver of the ECF invoice filing deadline rule).

⁵⁹ See *ECF Invoice Filing Waiver Order*, DA 23-669, at para. 8 (extending the ECF invoice filing deadline to October 30, 2023 for certain ECF program participants).

⁶⁰ See, e.g., *Hurricane Ida Order*, 36 FCC Rcd 13414, para. 25 (providing ECF applicants greater flexibility to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167, at *7-8, para. 12 (providing ECF applicants greater flexibility to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643, at *7-8, para. 12 (providing ECF applicants greater flexibility to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Ian).

⁶¹ 47 CFR § 54.1710(b).

⁶² 47 CFR § 54.1710(b)(2)(i). While we waive the requirement that the substituted equipment or service have the same functionality as the equipment or service being replaced, we remind applicants that the substituted equipment or service must still be eligible for support under the ECF rules. Therefore, an applicant cannot request to replace a laptop computer destroyed in the wildfires with an ineligible smartphone. See *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8710 para. 32 (2021) (*Emergency Connectivity Fund Report and Order*). In addition, we remind applicants that if an equipment or service substitution results in a change in the amount of support, support shall be based on the lower of either the price for the equipment or service for which support was originally requested or the price of the new, substituted equipment or service. 47 CFR § 54.1710(b)(3).

providers, where necessary) as quickly as possible, particularly where the availability of such items may be limited given the pandemic's impact on the global supply chain. The flexibility conferred by this measure effectively waives section 54.1710(b)(2)(i) of the Commission's rules for affected applicants while keeping the remaining aspects of the ECF service substitution rule intact, including the requirement that the service substitution request be in writing and that the substitution not violate any contract provisions or state, local, or Tribal procurement law.

25. *Documentation Retention and Production.* Recognizing that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by the Hawaii Wildfires, we next waive section 54.1715(b) of the Commission's rules, which requires ECF program participants to retain all records related to their participation in the program for at least 10 years after the last date of service or delivery of equipment.⁶³ As with our waiver of the E-Rate records retention rule, ECF applicants and service providers will not be penalized for failure to retain or produce records destroyed by the Hawaii Wildfires. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the wildfires. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party (e.g., consultant or service provider) upon request by USAC or the Commission. We note that the record retention and production requirements under our rules continue to apply to all records that were not destroyed by the wildfires, including records relating to any relief granted by this Order.

E. Rural Health Care Program

26. For health care providers and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Rural Health Care (RHC) Program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the 14-day deadline to respond to USAC information requests; (3) the five-year documentation retention and production rules for participating health care providers and service providers whose documents were destroyed by the Hawaii Wildfires; (4) the invoice filing deadline; and (5) the September 30, 2023 deadline for Healthcare Connect Fund Program participants to file Annual Reports.

27. *Deadline for Appeals and Requests for Waiver.* We waive and extend the 60-day deadlines in section 54.720(b) of the Commission's rules for requests for review or waiver of decisions by USAC or directed to USAC or the Commission.⁶⁴ We find that waiving the deadlines for health care providers and service providers in the Affected Disaster Areas for filing appeals and waivers is an appropriate measure to accommodate the extraordinary circumstances caused by the Hawaii Wildfires. Any harm in providing a filing deadline extension is outweighed by the significant public interest benefits derived from giving petitioners, participants, and other service providers additional time to submit their filings. To reduce the burden on affected program participants, we direct USAC to automatically provide affected program participants with an additional 150 days to file appeals and waivers. This waiver will be in effect for all deadlines of appeals and waiver requests from August 10, 2023 through 150 calendar days from the release of this Order.

28. *Response Time for USAC Information Requests.* We waive the 14-day deadline for RHC Program participants in the Affected Disaster Areas to respond to information requests from USAC.⁶⁵ We find that waiving the 14-day response time for USAC information requests is an appropriate response to the Hawaii Wildfires. This waiver applies to information requests related to funding requests, appeals and waivers, invoices, audits, and other documentation submitted by RHC Program participants, and will apply to all information requests with a deadline on or after August 10, 2023 regardless of the funding

⁶³ 47 CFR § 54.1715(b); *see also* 47 CFR § 54.720.

⁶⁴ 47 CFR § 54.720(a)-(b).

⁶⁵ *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 230, para. 1 (2015).

year for which those requests relate. We provide affected health care providers and service providers with up to 150 calendar days from the effective date of this Order to respond to information requests from USAC.

29. *Document Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by the Hawaii Wildfires. With respect to such destroyed records, we waive section 54.631(b) of the Commission's RHC Program rules, which requires health care providers and service providers to retain all documents specified by the rule for at least five years after the last day of the delivery of supported services in a given funding year.⁶⁶ Program participants will not be penalized for failure to retain records destroyed by the wildfires. Applicants and service providers are responsible, however, for obtaining such records, where available, from a third party upon request by USAC or the Commission. Program participants that rely on this waiver as a basis for not retaining or producing records upon request from USAC or the Commission will be required to certify that the records, and any copies of such records, were destroyed by the Hawaii Wildfires. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by the wildfires, including records relating to any relief granted by this Order.

30. *Invoice Filing Deadline.* We also waive section 54.627(a) to automatically grant a 120-day extension of the invoice filing deadline for all funding year 2022 funding requests from health care providers in the Affected Disaster Areas. Section 54.627(a) requires that RHC Program participants submit invoices to USAC within 120 days after the later of: (1) the service delivery deadline; or (2) the date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request.⁶⁷ RHC Program participants may request a one-time extension of the invoice filing deadline.⁶⁸ If the extension is timely requested, USAC is required to grant a 120-day extension.⁶⁹ We find that extending the invoice deadline is an appropriate measure to accommodate the extraordinary circumstances caused by the Hawaii Wildfires and that the significant public interest benefits derived from extending the deadline outweigh any possible harm from such relief. To reduce the burden on participants, we direct USAC to automatically provide participants in the areas affected by the Hawaii Wildfires with a 120-day extension to submit their invoices without it being requested.

31. *Health Care Connect Fund Program – Annual Reporting.* We also waive the September 30, 2023 deadline in section 54.618 of the Commission's rules for Healthcare Connect Fund Program participants located in the Affected Disaster Areas to file Annual Reports for funding year 2022.⁷⁰ We find that the property damage, personal injury, and disruptions in services caused by the Hawaii Wildfires warrant a waiver of the deadline for the annual reporting requirement. All affected Program participants will have up to 150 calendar days from the effective date of this Order to file Annual Reports for funding year 2022.

F. High Cost Program

32. *Waiver of Performance Measures Testing for Third and Fourth Quarter 2023.* Recipients of high-cost universal service support with broadband build-out obligations must test the speed

⁶⁶ 47 CFR § 54.631(b).

⁶⁷ 47 CFR § 54.627(a).

⁶⁸ 47 CFR § 54.627(b).

⁶⁹ *Id.*

⁷⁰ 47 CFR § 54.618.

and latency performance at the supported locations and submit the testing results.⁷¹ The purpose of the testing requirement is to ensure high-cost supported networks meet the required standards for the relevant support program. To capture any seasonal effects on a carrier's broadband performance, carriers must conduct one week of testing in each quarter of the calendar year—January through March (first quarter), April through June (second quarter), July through September (third quarter), and October through December (fourth quarter).⁷² Carriers in testing whose results show they are not meeting minimum requirements are subject to support withholding/reductions and additional reporting.⁷³

33. Hawaiian Telcom, Inc. (SAC 623100) (Hawaiian Telecom) is the one carrier receiving high-cost support in Hawaii. Hawaiian Telecom is subject to performance measures testing as a recipient of support under the Connect America Fund Phase II Auction (CAF II Auction) program, and its authorized census blocks include parts of the Affected Disaster Areas.⁷⁴

34. Given the substantial service disruptions and outages caused by the Hawaii Wildfires, the ability of Hawaiian Telecom to conduct performance testing is extremely difficult and burdensome, if not impossible. We previously said that we would generally consider requests “for waiver or extension [of performance testing] in cases where a major, disruptive event (e.g., a hurricane) negatively affects a provider's broadband performance.”⁷⁵ We find that acting *sua sponte*—absent any request—is prudent due the extreme nature of the wildfires, its impact, and recovery efforts, as this waiver relieves Hawaii Telecom from the additional burden of filing a petition.

35. Further, while the Bureau prefers that carriers reschedule testing within the quarter when possible,⁷⁶ again the extreme nature of the Hawaii Wildfires warrants waiving the requirements for the third and fourth quarter altogether rather than requiring Hawaiian Telecom to reschedule. Waiving the testing requirements for third and fourth quarter of 2023 is in the public interest as it allows Hawaiian Telecom to reappportion resources to better meet their customers' needs during storm recovery. Moreover, with this waiver, we are not relieving carriers from providing the required service levels to high-cost supported locations; rather, we are relieving them solely from the requirement to test performance for the third and fourth quarters of 2023. Hawaiian Telecom may be concerned about losing two quarters of testing data and how that will affect its compliance with testing obligations. Therefore, Hawaiian Telecom may still test its network and certify the results to be part of the compliance calculations. However, pursuant to this waiver, it is not required to do so.⁷⁷

⁷¹ The Commission adopted detailed performance measures requirements in 2018 and an order on reconsideration in 2019. See *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB 2018) (*First Performance Measures Order*), *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109 (2019) (*Performance Measures Reconsideration Order*). See also 47 CFR § 54.313(a)(6).

⁷² See *First Performance Measures Order*, 33 FCC Rcd at 6520, para. 29.

⁷³ See *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67, *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10133-38, paras. 65-75.

⁷⁴ Hawaiian Telcom (SAC 623100) is also authorized for support from the Rural Digital Opportunity Fund in parts of the Affected Disaster Areas, but that program is not yet subject to performance measures testing or pre-testing.

⁷⁵ See *First Performance Measures Order*, 33 FCC Rcd at 6521, para. 33.

⁷⁶ *Id.*

⁷⁷ We appreciate that Hawaiian Telcom is still assessing its network in the Affect Disaster Areas, and we will evaluate at a later time whether relief from the CAF II Auction 60% deployment milestone deadline of December 31, 2023 is warranted. See 47 CFR § 54.310, and *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 35 FCC Rcd 109, 112, para. 9 (WCB 2020). See also *supra* note 13.

G. Contributions

36. To provide further relief for affected companies, we waive additional rules and requirements for affected contributors to USF. We find that good cause exists to waive these rules and requirements, subject to the limitations herein, for all contributors serving the affected area. The extensive damage to property and infrastructure by the wildfires has caused significant disruption to operations in Hawaii. We find that these circumstances warrant a temporary waiver of the contributions rules and requirements described below. We have taken similar action under extreme circumstances in the past,⁷⁸ and find that granting this emergency relief will help to temporarily alleviate burdens on service providers in the Affected Disaster Areas.

37. *Form 499-Q Deadlines.* We extend the 45-day revision deadline for FCC Form 499-Q filings made on August 1, 2023, by contributors serving the Affected Disaster Areas. Extending this deadline will allow USAC to recalculate the contribution obligations for affected providers to immediately reflect the effect of the Hawaii Wildfires on contributor revenues rather than having to wait until next year's FCC Form 499-A true-up process. We direct USAC to accept revisions to these filings until November 1, 2023. For those contributors that seek to revise their August 2023 FCC Form 499-Qs after November 1, 2023, the Bureau will consider requests for an extension of the revision deadline on a case-by-case basis.

H. Protecting Program Integrity

38. We are committed to protecting the integrity of the Lifeline, Affordable Connectivity, E-Rate, Emergency Connectivity Fund, Rural Health Care, and High Cost programs (collectively, FCC programs). Although we grant the limited waivers described herein, program participants, service providers, and USF contributors remain otherwise subject to audits and investigations to determine compliance with FCC program rules and requirements. We will require USAC to recover funds through its normal process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the FCC programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, including directing USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the FCC programs under our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

39. ACCORDINGLY, IT IS ORDERED, pursuant to the authority in sections 1-4, 251(b)(2), 251(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 251(b)(2), 251(e), and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR §§ 1.106, 54.313(a)(6), 54.405(e)(3)-(4), 54.407(c)(2), 54.410(f), 54.504(d)(1)(i), 54.507(d)(4), 54.514(a), 54.516(a), 54.618, 54.627(a), 54.631(b), 54.720(b), 54.1710(b), 54.1711(d), 54.1715(b), 54.1718(b), 54.1806(f)(1), 54.1806(f)(5), 54.1808(c)(1)-(2), 54.1809(c), and 54.1809(d) of the Commission's rules ARE WAIVED to the extent provided herein.

⁷⁸ See, e.g., *Schools and Libraries Universal Service Support Mechanism, et al.*, Order, 32 FCC Rcd 7456 (2017) (waiving certain E-Rate, Rural Health Care, Lifeline, and contribution rules and deadlines to assist schools, libraries, healthcare providers, Lifeline Program participants, and contributors affected by Hurricanes Harvey, Irma, and Maria).

40. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau